IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 19, 2006

STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES v. P.M.T., ET AL.

Appeal from the Juvenile Court for Hamilton County
No. 195,908 Suzanne Bailey, Judge

No. E2006-00057-COA-R3-PT - FILED SEPTEMBER 15, 2006

The trial court terminated the parental rights of P.M.T. ("Mother") and J.L.T., Sr. ("Father") with respect to their minor child, J.L.T., Jr. ("the child") (DOB: May 9, 2002), upon finding, by clear and convincing evidence, that grounds for terminating their parental rights existed and that termination was in the best interest of the child. Mother and Father appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Robert B. Pyle, Chattanooga, Tennessee, for the appellant, P.M.T.

William G. Schwall, Chattanooga, Tennessee, for the appellant, J.L.T., Sr.

Paul G. Summers, Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee Department of Children's Services.

OPINION

I.

The Tennessee Department of Children's Services ("DCS") removed the child from the custody of Mother and Father on February 4, 2003. The child, who was approximately nine months old at the time, was found alone and injured in the apartment he shared with his parents. The child had an open sore on one of his toes and several marks on his back and legs. The physician who later examined the child stated that the subject marks were likely caused by a switch, a wire hanger, or something of that nature. DCS's petition for temporary custody recites that Mother and Father reportedly suffer from mental retardation. The petition also states that

DCS had received "[r]eferrals" regarding the child since his birth, but that Mother and Father had evaded earlier attempts by DCS to investigate the child's circumstances.

On April 2, 2003, an adjudicatory hearing was held, after which the trial court ordered that the child would remain in the custody of DCS. The court found the child to be "a dependent and neglected child in that he was taken to the doctor only once [by Mother and Father]. . . ." It also found that Mother and Father had neglected the child by failing to secure medical treatment for his toe injury. The court found that the emergency room records regarding the marks on the child's back and legs were sufficient evidence of abuse in the home or evidence that someone outside the home had hit the child while the child was in the custody of Mother and Father. The child was eventually placed with Elizabeth Townsend, the sister of Mother. Ms. Townsend now wishes to adopt the child.

In September and October, 2003, Mother and Father were evaluated by Dr. Bertin Glennon, a psychological examiner. Dr. Glennon found that Father's responses to the Wide Range Intelligence Test indicated borderline verbal functioning and poor visual performance. The doctor's report states that Father's "IQ places him in the moderate mentally retarded functioning" range. Dr. Glennon also found that Father suffered from at least two mental illnesses that would require long term psychiatric therapy and medication. Father presented delusional processes and poor cognitive functioning. Father exhibited signs of hypomanic functioning, which, according to Dr. Glennon's report, tends to present itself in demanding and impulsive behavior. Dr. Glennon also noted Father's difficulty in establishing supportive relationships and in dealing with his extended family. Father repeatedly expressed anger toward his in-laws. Father told Dr. Glennon that he had previously been prescribed anti-psychotic medication, but that he was no longer taking it. Dr. Glennon's report states that Father would be unable to safely parent the child without a support system.

Dr. Glennon also found that Mother suffered from severe mental retardation. According to the doctor's report, Mother would need a "responsible adult" to take primary care of the child.

On November 8, 2004, DCS filed a petition to terminate the parental rights of Mother and Father. Following a bench trial, the court terminated their parental rights, finding clear and convincing evidence to support the following grounds for termination: (1) abandonment; (2) substantial noncompliance with a permanency plan; (3) persistent unremedied conditions; and (4) mental incompetence. In its final judgment, entered December 22, 2005, the trial court found as follows:

> (a) The Department made reasonable efforts to prevent the child's removal from the [Mother and Father's] custody, however, the child's emergency circumstances prevented further preventive efforts from being made. The subject child was suffering from neglect and physical abuse by his parents;
>
> (b) The Department made reasonable efforts to assist [Mother and Father] to establish a suitable home for the child for a period of at

least four (4) months following the removal, but [Mother and Father] made no reasonable efforts to provide a suitable home and demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The Department prepared detailed permanency plans with goals of reunification for the parents; involved the parents in staffing those plans; provided the parents verbal and written information and assistance in obtaining services needed to successfully complete their responsibilities, and repeatedly encouraged them to do so; placed the child in the home of relatives; monitored the case and kept accurate records; facilitated visitation and provided specialized parent coaching and visitation observation through Family Menders; and ensured the child's needs were identified and met. The parents failed to make substantial efforts on their permanency plan responsibilities and failed or refused to cooperate with efforts by agencies and individuals to assist them. Early in 2004, the parents failed to visit the child for four (4) consecutive months, without valid excuse. [F]ather made numerous threats to harm the Department's case manager and his mother-in-law, which escalated into threats of homicide. As a result, at the hearing of September 21, 2004, this Court ordered that [Father] be restrained from having any further contact, whatsoever, with the case manager, and relieved the Department from making any further reasonable efforts to assist [Father];

(c) [Mother and Father] failed to comply in a substantial manner with the statement of responsibilities set out in periodic foster care plans prepared for and signed by [Mother and Father], following the subject child being found to be dependent and neglected by this Court. Children's Services explained to [Mother and Father] those reasonable responsibilities, which are directly related and aimed at remedying the conditions, which necessitate[d] foster care placement. Specifically, [Mother and Father] failed to follow the recommendations made as a result of their parenting/psychological assessments; failed to demonstrate the ability to consistently recognize and meet the child's physical, emotional and developmental needs; failed to demonstrate that they have the developmental and emotional capacity to provide age-appropriate care for the child; failed to demonstrate the ability to consistently prioritize and manage their money; and failed to voluntarily pay child support;

(d) The subject child has been removed by order of a court for a period of at least six (6) months, specifically since February 4,

2003. The conditions which led to the removal still persist or other conditions persist which in all probability would cause the child to be subjected to further abuse and neglect and which, therefore, prevent the child's return to the care of [Mother and Father]. There is little likelihood that these conditions will be remedied at an early date so that the child can be placed in the care of [Mother and Father] in the near future. The subject child was the victim of ongoing neglect and physical abuse while in the care of his parents. At the time of removal, the child was dirty and in a soiled diaper that he had apparently been wearing for days. He was also suffering multiple injuries allegedly inflicted by his parents, for which the parents had failed to seek medical attention. The residence lacked adequate or safe furnishings, lacked adequate food for the parents or the child, and the parents had no support system. Following the child's removal, the Department found that the parents ha[ve] only taken the child for one (1) pediatric check-up since his birth; that the child's injuries to his back and legs were of varying ages, were not self-inflicted, and that the parents had been hiding from the Department and from their landlord. [F]ather repeatedly made threats of violence against Department staff and his in-laws. [F]ather has the inability to establish or maintain close supportive relationships and has alienated all possible relative support by his continued hostile threats of bodily harm. The parents suffer mental retardation and/or mental health disorders and for over 20 months they failed to demonstrate the ability to properly and safely care for, nurture and protect the subject child. The child consistently showed extreme anxiety and fear in the presence of his parents and would cling to anyone else to keep from being touched or held by either parent. On-going, intensive efforts to calm the child's fear of his parents failed. [F]ather demonstrated unrealistic expectations of what the child (then approximately 2 years old) could and could not do, and often had to be corrected in order to protect the child from harm. Test results revealed that neither parent has the ability to properly and safely parent a child; [and]

(e) [Mother and Father] are incompetent to adequately provide for the further care and supervision of the child because [] their mental condition is presently so impaired, and is so likely to remain so, that it i[s] unlikely that they will be able to assume the care of and responsibility for the child in the near future. Parenting assessment reports by Dr. Bertin Glennon of Center for Individual and Family effectiveness dated November 1, 2003, state th[at] [Mother] suffers Severe Cognitive Disability and Severe Mental Retardation, which would require another caring adult to have

> primary responsibility for raising the subject child, as it does not appear she has the ability to do this on her own, and; that [Father] suffers Moderate Mental Retardation, Delusional Disorder (Persecutory Type with Prominent Hypomania) and Poor Cognitive Functioning, which prevents him from being able to safely parent a child. [Father] failed to fully comply with the recommended mental health monitoring, treatment and training. The parent[s] showed no marked improvement in their ability to properly and safely care for the child and they are without the ability to form and maintain supportive relationships necessary to ensure the safety of the child. Further, the Court's observations of [Mother and Father's] actions during these proceedings, shows the Court that [Mother and Father] are unable to control their anger[.]

The trial court further concluded that the termination of the parental rights of Mother and Father was shown, by clear and convincing evidence, to be in the child's best interest.

II.

The law is well established that "parents have a fundamental right to the care, custody, and control of their children." ***In re Drinnon***, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988) (citing ***Stanley v. Illinois***, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)). This right, however, is not absolute and may be terminated if there is clear and convincing evidence justifying termination under the pertinent statute. ***Santosky v. Kramer***, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Clear and convincing evidence is evidence that "eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence." ***O'Daniel v. Messier***, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

III.

In cases involving the termination of parental rights, our *de novo* review is somewhat different from our review of a typical bench trial. The difference is addressed in our case of ***In re M.J.B.***, 140 S.W.3d 643 (Tenn. Ct. App. 2004), in which we said the following:

> Because of the heightened burden of proof required by Tenn. Code Ann. § 36-1-113(c)(1), we must adapt Tenn. R. App. P. 13(d)'s customary standard of review for cases of this sort. First, we must review the trial court's specific findings of fact de novo in accordance with Tenn. R. App. P. 13(d). Thus, each of the trial court's specific factual findings will be presumed to be correct unless the evidence preponderates otherwise. Second, we must determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights.

Id. at 654 (citations omitted). As can be seen from the above, our determination regarding the issue of whether "the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements required to terminate a biological parent's parental rights" is a question of law. Hence, we accord no deference to the trial court's judgment as to this issue. ***Brumit v. Brumit***, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997).

IV.

Tenn. Code Ann. § 36-1-113(g) lists the grounds upon which parental rights may be terminated, and "the existence of any one of the statutory bases will support a termination of parental rights." ***In re C.W.W.***, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000). The issues raised in the pleadings, and the trial court's findings, implicate the following statutory provisions:

Tenn. Code Ann. § 37-1-147 (2005)

> (a) The juvenile court shall be authorized to terminate the rights of a parent or guardian to a child upon the grounds and pursuant to the procedures set forth in title 36, chapter 1, part 1.
>
> * * *

Tenn. Code Ann. § 36-1-113 (2005)

> (a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, . . . by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4.
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> * * *
>
> (c) Termination of parental or guardianship rights must be based upon:
> (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
> (2) That termination of the parent's or guardian's rights is in the best interests of the child.
>
> * * *

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:
(1) Abandonment by the parent or guardian, as defined in [Tenn. Code Ann.] § 36-1-102, has occurred;
(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4;
(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:
(i) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;
(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and
(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

* * *

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child.
(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:
(i) The parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future, and
(ii) That termination of parental or guardian rights is in the best interest of the child.
(C) In the circumstances described under subdivisions (8)(A) and (8)(B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child

need be shown to establish that the parental or guardianship rights should be terminated.

* * *

Tenn. Code Ann. § 36-1-102 (2005)

As used in this part, unless the context otherwise requires:
(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:
(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child; [or]
(ii) The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date[.]

* * *

Tenn. Code Ann. § 37-2-403 (2005)

(a)(1) Within thirty (30) days of the date of foster care placement, an agency shall prepare a plan for each child in its foster care. . . .

* * *

> (2)(A) The permanency plan for any child in foster care shall include a statement of responsibilities between the parents, the agency and the caseworker of such agency. Such statements shall include the responsibilities of each party in specific terms and shall be reasonably related to the achievement of the goal specified [in the plan]. . . .
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> * * *
>
> (C) Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights. . . .

V.

Though they appeal separately, Mother and Father raise the same three issues for our consideration: (1) whether the evidence supports a finding of their substantial noncompliance with the statement of responsibilities set forth in the permanency plans; (2) whether the evidence supports a finding that termination of their parental rights is in the best interest of the child; and (3) whether the trial court erred in considering their failure to pay child support. We will address each issue in turn.

VI.

Mother and Father first contend that the trial court erred when it found clear and convincing evidence of substantial noncompliance by the parents with the statement of responsibilities set forth in the permanency plans. *See* Tenn. Code Ann. § 36-1-113(g)(2). The record contains two permanency plans with respect to the child. One plan is dated February, 2003, while the other is dated February, 2004. In addressing whether there was substantial noncompliance with these plans, we will discuss each specific plan requirement and the evidence which tends to suggest compliance or noncompliance on the part of Mother and Father.

The plans required Mother and Father to "obtain parenting assessments [*e.g.*, parenting classes, anger management, etc.] to determine if they are emotionally able to care for a child"; "follow <u>any and all</u> recommendations made as the result of the assessment"; and "sign releases in order for DCS to obtain the results of each assessment." (Underlining in original). The plan stated that the "[d]esired outcome" of these actions was that Mother and Father demonstrate that they have the "ability to recognize and meet [the child]'s physical, emotional, and developmental needs on a consistent basis." DCS provided Mother and Father with specialized parenting training through a program called Family Menders. A Family Menders specialist accompanied Mother and Father on several visits with the child. The specialist was to address how Mother

and Father interacted with the child. The record does not address the observations of the specialist or any recommendations made as a result of this program.

The plans also required Mother and Father to "obtain psychological evaluations [, including an IQ test] to determine if they are developmentally and emotionally capable of raising a child"; "follow through with any and all recommendations made as the result of the evaluation"; and "sign releases in order for DCS to obtain the results of each evaluation." (Underlining in original). The "[d]esired outcome" of these actions was that Mother and Father would "demonstrate [] that they have the developmental and emotional capacity to provide age-appropriate care for [the child]." Mother and Father obtained a psychological evaluation through Dr. Glennon. Dr. Glennon's report states that Father required specialized parenting training. DCS provided parenting training through Family Menders. The report also states that Father should be referred for psychiatric evaluation and should follow the therapy suggested by the psychiatrist. Father testified that he was currently seeing a mental health professional and was back on anti-psychotic medications. There is no evidence disputing this testimony by Father. Katherine Gray, the principal DCS case worker assigned to the child's case, testified that Mother and Father failed to sign certain releases which would allow DCS to obtain information "from their counseling."

Dr. Glennon testified that he did not believe that Mother and Father could effectively and safely parent the child without ongoing supervision. Ms. Gray asked Mother and Father if they had any family members or knew anybody who could live with them and supervise the raising of the child. Mother and Father had no one. When asked if such ongoing supervision would result in a successful reunification between the child and his parents, Dr. Glennon stated that it was "possible," but "not very probable."

The plans next required Mother and Father to "obtain and maintain housing that is safe and free of environmental hazards." The plan stated that the "[d]esired outcome" regarding this requirement was that Mother and Father would "obtain and maintain safe, stable, appropriate housing for a period of no less than six consecutive months." Ms. Gray testified that, in 2004, she conducted a home study of the apartment that Mother and Father lived in for approximately two and a half years. Ms. Gray discovered that children were not allowed to live in the apartment complex. Mother and Father testified that, approximately two months before trial, they relocated to an address which permitted children. There is no evidence in the record disputing this fact. Ms. Gray also stated that she told Mother and Father of concerns she had with "things" in the apartment. Ms. Gray failed to state, however, whether Mother and Father addressed her concerns.

The permanency plans further required Mother and Father to "prioritize so that basic needs such as housing, food, utilities, health care, and clothing are met prior to any other expenditures"; "establish and maintain a weekly budget/accounting system of all income and expenditures"; and "inform their caseworker of changes in the budget or in income/expenditures." The "[d]esired outcome" was that Mother and Father would "consistently demonstrate the ability to prioritize and manage their money so that [the child]'s basic needs are met." Ms. Gray testified that Mother and Father have stable incomes that come

primarily from Social Security. Ms. Gray also stated that she sat down with Mother and Father and developed a budget for their household. Nothing in the record addresses the ultimate success or failure of this budget.

Lastly, the plans required Mother and Father to "voluntarily pay child support as set forth by State of Tennessee guidelines and/or court orders." The stated "[d]esired outcome" of this requirement was that Mother and Father would "contribute to [the child]'s financial well-being." Mother and Father did not make child support payments. However, they testified that they contacted DCS about making the payments on numerous occasions and that DCS told them that they did not have to make the payments because their income primarily came from SSI. DCS does not dispute this fact.

The foregoing evidence clearly indicates that Mother and Father failed to achieve the "[d]esired outcome[s]" of the permanency plans, *i.e.*, they failed to demonstrate the ability to recognize and meet the child's physical and emotional needs, and they failed to demonstrate that they had the developmental and emotional capacity to properly care for the child. However, Tenn. Code Ann. § 36-1-113(g)(2) does not require substantial compliance with a permanency plan's "[d]esired outcome[s]," rather, it requires substantial compliance with a plan's statement of responsibilities, *i.e.*, the actions required to be taken by the parent or parents. Mother and Father obtained the required parenting and psychological assessments. They established a budget. It is true, as DCS contends, that the parents failed to sign certain releases so that DCS could obtain their counseling records. However, we conclude that there is an absence of evidence showing that Mother and Father failed to follow specific recommendations of the assessments/evaluations or that they failed to comply with other specific statements of responsibility. Accordingly, we cannot say that there is clear and convincing evidence of substantial noncompliance with the permanency plans. Thus, we find that the evidence preponderates against the trial court's finding with respect to this ground for termination.

Having found in favor of Mother and Father on this issue, we reiterate that "[i]nitiation of termination of parental . . . rights may be based upon *any*" of nine statutory grounds. Tenn. Code Ann. § 36-1-113(g) (Emphasis added). We note that Mother and Father have not raised any issues regarding the trial court's findings with respect to abandonment, persistent unremedied conditions, and mental incompetence. Despite this – and in the interest of justice – we have reviewed the record pertaining to these unchallenged other grounds for terminating the parents' rights with respect to their child. We conclude from this review that the evidence does not preponderate against the facts that support these additional grounds for termination.

VII.

Next, we examine the issue of the best interest of the child. The factors a court must consider when deciding whether the termination of parental rights is in the best interest of a child are set forth in Tenn. Code Ann. § 36-1-113(i) (2005):

> (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
> (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
> (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
> (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
> (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
> (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
> (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
> (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
> (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to [Tenn. Code Ann.] § 36-5-101.

This list is "not exhaustive," and there is no requirement that every factor must appear "before a court can find that termination is in a child's best interest." ***Dep't of Children's Servs. v. T.S.W.***, No. M2001-01735-COA-R3-CV, 2002 WL 970434, at *3 (Tenn. Ct. App. M.S., filed May 10, 2002).

The testimony and record amply reveal that Mother and Father do not possess the mental capacity necessary to effectively and safely parent the child. *See* Tenn. Code Ann. § 36-1-113(i)(8). In addition to Dr. Glennon's report and testimony, the child's aunt, Ms. Townsend, and the child's maternal grandmother, Clara Malone, testified that they did not believe that Mother and Father, either separately or together, could properly care for the child. Ms. Gray also testified that, because of safety issues, she never felt confident recommending that the child be returned to the custody of Mother and Father.

Mother and Father have not been able to improve their cognitive skills to the point where they can understand how to parent the child. *See* Tenn. Code Ann. § 36-1-113(i)(1). Their own testimony at trial demonstrated their continued limited mental capacity. They each testified that they had three adult children, the oldest of which would have been born when Mother was 11 years old. Mother lived with her mother, Ms. Malone, until she was 35 years old. Ms. Malone testified that Mother and Father did not have other children together. Mother and Father have no support system, and it does not appear that they will be able to make the changes necessary to safely parent the child on their own. *See* Tenn. Code Ann. § 36-1-113(i)(2).

DCS provided Mother and Father with supervised visitation of the child every other week for approximately two years. The DCS case worker that supervised the visits, Katherine Blackwell, testified that Mother and Father missed approximately five visits and often arrived twenty to thirty minutes late. *See* Tenn. Code Ann. § 36-1-113(i)(3). The trial court found that Mother and Father failed to visit the child for four consecutive months in 2004. The record, however, does not support this finding. Ms. Blackwell testified that the visitations ceased approximately three weeks prior to trial. She further stated that she believed the longest duration Mother and Father went without visiting the child was, at most, three weeks. *See* ***id.***

According to Ms. Blackwell, the visits went "really bad" in the beginning because the child did not "want to have anything to do with [Mother and Father]." She stated that, if she tried to hand the child over to Mother or Father, the child would scream and cry. The child would cling to Ms. Blackwell. Ms. Blackwell testified that, through her observation, the child started to look forward to seeing Mother and Father but only because they would bring the child french fries and Cokes. The evidence does not preponderate against a finding that there is not a meaningful relationship between the child and his parents. *See* Tenn. Code Ann. § 36-1-113(i)(4).

The child has been in the care of his aunt, Ms. Townsend, for the majority of his life. Ms. Townsend has nurtured a strong bond with the child. A change in caretakers at this time, *i.e.*, returning the child to the care of Mother and Father, would likely have a profoundly negative psychological and emotional impact on the child. *See* Tenn. Code Ann. § 36-1-113(i)(5). Furthermore, the evidence is that the child was the victim of ongoing neglect and abuse while in the care of Mother and Father. *See* Tenn. Code Ann. § 36-1-113(i)(6). The child was alone and dirty when he was first removed from their custody. He had obvious injuries for which Mother and Father had failed to seek medical attention. The child's injuries on his back and legs were of varying ages and were not self-inflicted.

We conclude that the evidence does not preponderate against the trial court's finding, made by clear and convincing evidence, that the termination of the parental rights of Mother and Father is in the best interest of the child.

VIII.

Mother and Father also argue that the trial court erred in considering their failure to pay child support because their income is derived primarily, if not entirely, from SSI. To support

this argument, they cite the Child Support Guidelines, which specifically provide that "Supplemental Security Income (SSI) received under Title XVI of the Social Security Act" is excluded from the calculation of a noncustodial parent's gross income. Tenn. Comp. R. & Regs. 1240-2-4-.04(3)(c)(2)(iii) (2006); *see* ***State ex rel. Raybon v. McElrath***, No. M2001-01295-COA-R3-JV, 2003 WL 22401276, at *2 (Tenn. Ct. App. M.S., filed October 22, 2003). The trial court listed Mother and Father's failure to pay child support as evidence of its finding that there was substantial noncompliance with the permanency plans. Having found that the evidence preponderates against the trial court's finding that Mother and Father failed to substantially comply with the plans' statement of responsibilities, we do not find it necessary to consider the "child support" aspect of the noncompliance issue.

IX.

The judgment of the trial court is affirmed and this matter is remanded to the trial court for enforcement of its judgment and collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed against the appellants, P.M.T. and J.L.T., Sr.

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CHARLES D. SUSANO, JR., JUDGE